

AMENDED IN ASSEMBLY AUGUST 6, 2012

AMENDED IN ASSEMBLY JULY 5, 2012

AMENDED IN ASSEMBLY JUNE 20, 2012

AMENDED IN SENATE APRIL 30, 2012

SENATE BILL

No. 1549

Introduced by Senator Vargas

February 24, 2012

An act to add Chapter 6.6 (commencing with Section 6950) to Part 1 of Division 2 of the Public Contract Code, relating to public contracts, *and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1549, as amended, Vargas. Transportation projects: alternative project delivery methods.

Existing law sets forth the requirements for the solicitation and evaluation of bids and the awarding of contracts by state agencies for projects, as specified, and for local agencies for public works contracts, as specified.

This bill would allow the San Diego Association of Governments to utilize alternative project delivery methods, as defined, for public transit projects within its jurisdiction. The bill would ~~also~~, upon completion of a project, require a progress report to be submitted by the San Diego Association of Governments to its governing board and would require the report to be made available on its Internet Web site. ~~This bill would require specified information to be verified under oath, thus imposing~~ *The bill would also, except as provided, require the San Diego Association of Governments to pay fees related to these projects into the State Public Works Enforcement Fund, a continuously appropriated*

fund, thereby making an appropriation. Because this bill would subject these projects to certain prevailing wage enforcement requirements, the violation of which is a crime, it would impose a state-mandated local program by expanding the scope of an existing crime. The bill would provide that its provisions are severable.

This bill would make legislative findings and declarations as to the necessity of a special statute for San Diego regional transportation entities.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: ~~no~~ yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 6.6 (commencing with Section 6950) is
2 added to Part 1 of Division 2 of the Public Contract Code, to read:

3

4 CHAPTER 6.6. ALTERNATIVE PROJECT DELIVERY PROGRAM:
5 CONSTRUCTION MANAGER/GENERAL CONTRACTOR AUTHORITY

6

7 6950. The Legislature finds and declares all of the following:

8 (a) The alternative public works project delivery methods
9 authorized under this chapter should be evaluated for the purposes
10 of exploring whether the potential exists for reduced project costs,
11 expedited project completion, or design features that are not
12 achievable through the traditional project delivery methods.

13 (b) The design sequencing and Construction Manager/General
14 Contractor project delivery methods rely on existing
15 design-bid-build and design-build procurement methods
16 respectively and have been successfully used by both public and
17 private sector entities in California and other states for over a
18 decade on projects that require a quick startup as they allow
19 construction to begin before the design plans are complete for the
20 entire project.

1 (c) Both methods also have the benefit of allowing for earlier
2 collaboration between the project owner and construction
3 contractor.

4 (d) This chapter shall not be deemed to provide a preference
5 for these project delivery methods over other delivery
6 methodologies.

7 6951. For purposes of this chapter, the following definitions
8 apply:

9 (a) “Alternative project delivery method” means either
10 Construction Manager/General Contractor method or design
11 sequencing.

12 (b) “Construction Manager/General Contractor method” or
13 “CMGC” means a project delivery method using a best value
14 procurement process in which a construction manager is procured
15 to provide preconstruction services during the design phase of the
16 project and construction services during the construction phase of
17 the project. The execution of the design and the construction of
18 the project may be in sequential phases or concurrent phases.

19 (c) “Construction manager” means a partnership, corporation,
20 or other legal entity that is able to provide appropriately licensed
21 contracting and engineering services as needed pursuant to a
22 CMGC contract.

23 (d) “Design sequencing” means a method of project delivery
24 that enables the sequencing of design activities to permit each
25 construction phase to commence when the design for that phase
26 is complete, instead of requiring design for the entire project to be
27 completed before commencing construction.

28 (e) “Department” means the Department of Transportation as
29 established under Part 5 (commencing with Section 14000) of
30 Division 3 of the Government Code.

31 (f) “San Diego Association of Governments” means the
32 consolidated agency created pursuant to Chapter 3 (commencing
33 with Section 132350) of Division 12.7 of the Public Utilities Code.

34 6952. (a) Subject to the limitations of this chapter, the San
35 Diego Association of Governments may utilize the alternative
36 project delivery methods for public transit projects within the
37 jurisdiction of the San Diego Association of Governments.

38 (b) The San Diego Association of Governments may enter into
39 an alternative project delivery method contract pursuant to this
40 chapter if, after evaluation of the traditional design-bid-build

1 process of construction and of the alternative project delivery
2 method in a public meeting, the San Diego Association of
3 Governments makes a written finding that use of the alternative
4 project delivery method on the specific project under consideration
5 will accomplish one or more of the following objectives: reduce
6 project costs, expedite the project's completion, or provide features
7 not achievable through the design-bid-build method. This finding
8 must be made prior to the San Diego Association of Governments
9 entering into an alternative project delivery method contract. In
10 the alternative project delivery method proposal, the written
11 findings shall be included as part of any application for state funds
12 pursuant to this chapter.

13 6953. (a) ~~All CMGC contracts awarded pursuant to this chapter~~
14 ~~shall be subject to the procurement method requirements for~~
15 ~~professional services contracts set forth in Section 132352.4 of the~~
16 ~~Public Utilities Code, except insofar as they may conflict with the~~
17 ~~provisions of this chapter. Except as specified in subdivision (b),~~
18 *the San Diego Association of Governments shall comply with*
19 *subdivision (f) of Section 1771.5 of the Labor Code and shall*
20 *reimburse the Department of Industrial Relations for its reasonable*
21 *and directly related costs of performing prevailing wage*
22 *monitoring and enforcement on public works projects pursuant to*
23 *rates established by the department as set forth in subdivision (h)*
24 *of that section on projects using an alternative project delivery*
25 *method under this chapter. All moneys collected pursuant to this*
26 *subdivision shall be deposited in the State Public Works*
27 *Enforcement Fund, created by Section 1771.3 of the Labor Code,*
28 *and shall be used only for enforcement of prevailing wage*
29 *requirements on those projects.*

30 (b) ~~All contracts awarded using the design sequencing project~~
31 ~~delivery method shall be subject to Chapter 10 (commencing with~~
32 ~~Section 4525) and Chapter 10.1 (commencing with Section~~
33 ~~4529.10) of Division 5 of the Government Code and Part 1~~
34 ~~(commencing with Section 1100) of, Chapter 1 (commencing with~~
35 ~~Section 10100) of Part 2 of, and Part 3 (commencing with Section~~
36 ~~20100) of, Division 2 of this code, as applicable, except that~~
37 ~~construction may be commenced as specified in subdivision (d)~~
38 ~~of Section 6951. In lieu of complying with subdivision (a), the San~~
39 ~~Diego Association of Governments may elect to enter into a~~
40 *collective bargaining agreement that binds all of the contractors*

1 *performing work on the project and that includes a mechanism*
2 *for resolving disputes about the payment of wages.*

3 6954. (a) If a contract for CMGC services is entered into
4 pursuant to this chapter and includes preconstruction services by
5 the construction manager, the San Diego Association of
6 Governments shall enter into a written contract with the
7 construction manager for preconstruction services, under which
8 the San Diego Association of Governments shall pay the
9 construction manager a fee for preconstruction services in an
10 amount agreed upon by the San Diego Association of Governments
11 and the construction manager. The preconstruction services contract
12 may include fees for services to be performed during the contract
13 period; provided, however, the San Diego Association of
14 Governments shall not request or obtain a fixed price or a
15 guaranteed maximum price for the construction contract from the
16 construction manager or enter into a construction contract with
17 the construction manager until after the San Diego Association of
18 Governments has entered into a services contract. A preconstruction
19 services contract shall provide for the subsequent negotiation for
20 construction of all or any discrete phase or phases of the project
21 and shall provide for the San Diego Association of Governments
22 to own the design plans and other preconstruction services work
23 product.

24 (b) A contract for construction services will be awarded after
25 the plans have been sufficiently developed and either a fixed price
26 or a guaranteed maximum price has been successfully negotiated.
27 In the event that a fixed price or a guaranteed maximum price is
28 not negotiated, the San Diego Association of Governments may
29 award the contract for construction services utilizing any other
30 procurement method authorized by law.

31 (c) The construction manager shall perform not less than 30
32 percent of the work covered by the fixed price or guaranteed
33 maximum price agreement reached. Work that is not performed
34 directly by the construction manager shall be bid to subcontractors
35 pursuant to Section 6955.

36 6955. All subcontractors bidding on contracts pursuant to this
37 chapter shall be afforded the protections contained in Chapter 4
38 (commencing with Section 4100).

39 6956. (a) Notwithstanding any other provision of this chapter,
40 for a project authorized under this chapter that will be constructed

1 on a state-owned right-of-way, the department is the responsible
2 agency for the performance of project development services,
3 including performance specifications, preliminary engineering,
4 prebid services, the preparation of project reports and
5 environmental documents, and construction inspection services.
6 The department is also the responsible agency for the preparation
7 of documents that may include, but need not be limited to, the size,
8 type, and desired design character of the project, performance
9 specifications covering quality of materials, equipment, and
10 workmanship, preliminary plans, and any other information deemed
11 necessary to describe adequately the needs of the transportation
12 entity.

13 (b) The department may use department employees or
14 consultants to perform the services described in subdivision (a),
15 consistent with Article XXII of the California Constitution.
16 Department resources, including personnel requirements, necessary
17 for the performance of those services shall be included in the
18 department's capital outlay support program for workload purposes
19 in the annual Budget Act.

20 6957. Nothing in this chapter affects, expands, alters, or limits
21 any rights or remedies otherwise available at law.

22 6958. (a) Upon completion of a project using an alternative
23 project delivery method, the San Diego Association of
24 Governments shall prepare a progress report to its governing body.
25 The progress report shall include, but shall not be limited to, all
26 of the following information:

- 27 (1) A description of the project.
- 28 (2) The entity that was awarded the project.
- 29 (3) The estimated and actual costs of the project.
- 30 (4) The estimated and actual schedule for project completion.
- 31 (5) A description of any written protests concerning any aspect
32 of the solicitation, bid, proposal, or award of the project, including,
33 but not limited to, the resolution of the protests.
- 34 (6) An assessment of the prequalification process and criteria
35 utilized under this chapter if the CMGC procurement method is
36 used.
- 37 (7) A description of the method used to evaluate the bid or
38 proposal, including the weighting of each factor and an assessment
39 of the impact of this requirement on a project.

1 (8) A description of any challenges or unexpected problems
2 that arose during the construction of the project and a description
3 of the solutions that were considered and ultimately implemented
4 to address those challenges and problems.

5 (9) Recommendations to improve the alternative project delivery
6 methods authorized under this chapter.

7 (b) The progress report shall be made available on the San Diego
8 Association of Governments' Internet Web site.

9 6959. (a) The provisions of this chapter are severable. If any
10 provision of this chapter or its application is held invalid, that
11 invalidity shall not affect other provisions or applications that can
12 be given effect without the invalid provision or application.

13 (b) Contracts awarded pursuant to this section shall be valid
14 until the project is completed.

15 SEC. 2. The Legislature finds and declares that a special law
16 is necessary and that a general law cannot be made applicable
17 within the meaning of Section 16 of Article IV of the California
18 Constitution because of the unique need for alternative contracting
19 authority for local public transportation projects under the
20 jurisdiction of the San Diego Association of Governments.

21 SEC. 3. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.